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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,131	03/06/2001	Mark A. Weakly	UNL 3043	3820

321 7590 08/29/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT	PAPER NUMBER
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3713

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DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,131

Applicant(s)

WEAKLY, MARK A.

Examiner

Kathleen M Christman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9-17, 19 and 23 is/are rejected.
- 7) ☒ Claim(s) 5, 8, 18 and 20-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

In response to the amendment filed 06/24/2003, claims 1-17 and newly added claims 18-23 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 19, 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the alternative "and/or" is indefinite and does not clearly define the scope of the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 7 and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellegrino et al (US 6149441) in view of Leshem et al (US 5870559). Pellegrino et al teaches a distance learning program having a URL structure of linked pages accessible by the user via the user processor wherein the linked pages include information to be taught to the user (claims 1, 16 and 17), see col. 2: 35-38 and col. 9: 49-61. This included a beginning page that is linked to a course selection page (course unit), which is further linked to the pages containing educational material on the subject (as in claims 10-12), see Figures 3-8. Pellegrino et al teaches the ability to track user actions as they navigate through

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the lessons in the description of "Navigation Elements" starting at col. 22: 42. The functional components of the Pellegrino et al software may be stored client side, as in claim 9. However, Pellegrino fails to teach the specific functionality of this tracking software as recited in claims 1-4, 6, 7, 13 and 14.

Leshem et al teaches a software tracking system which track's a user's progress through a series of linked pages and creates a history file of the pages visited, said history file remotely stored on a server for independent access, see col. 3:10-18, as per claims 1, 16 and 17. The system includes the ability to display the site map to a user (or users in the case of showing the map to the student also) of the system based on the history file, upon request, as in claims 2 and 17, where in the sitemap is generated by a web-crawler program (col. 2: 8-10), as in claim 3. The site-map being color coded, as per claim 4, is taught in col. 2: 66 - col. 3: 5. Regarding claims 6 and 7, a tree view of the URL structure within the site-map is taught in col. 2: 30-35, and an outline view is taught in col. 16: 48-52. The URL being stored in the history file, as in claim 13, is taught at col. 28: 23-28. Regarding claim 14, this concept is demonstrated in Figure 4.

Given Pellegrino's teachings of the need for tracking software in an educational program it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the tracking system of Leshem et al into the web-based educational system of Pellegrino et al so as to provide an accurate mean for tracking a user's progress through the educational content.

Regarding claim 15, neither Pellegrino et al nor Leshem et al directly teaches that the tracking software is a java applet. It is the examiner's position that the specific language in which one chooses to program is a matter of design choice and bares no patentable weight.

Allowable Subject Matter

3. Claims 19 and 23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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4. Claims 5, 8, 18, and 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed 06/24/2003 have been fully considered but they are not persuasive.

Response to Section 1:

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant has asserted that there is no motivation to combine Pellegrino et al with the teachings of Leshem et al aside from hindsight. The examiner respectfully disagrees. Pellegrino et al clearly shows the ability to track a user's interaction with a web-based educational system. Stating that a teacher may use this information to "assess student comprehension and performance in carrying out the assignment(s) of the lesson and for generating reports based on the recorded tracking data", col. 22: 48-53. Pellegrino et al does not show a clear implementation of this tracking. Given this one of ordinary skill in the art would seek outside references on the topic of user tracking, such as the Leshem reference. Therefore it would be obvious to employ this functionality into the Pellegrino et al system/method.

Response to section 2:

Applicant asserts that the "tracking" features of Pellegrino differ from the tracking of the tracking features of the instant invention. Stating that "the term tracking in the context of the

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system and method of the invention includes ascertaining and recording movement from a page within the educational course to any other page and so on". However, the examiner has failed to find clear support for this limited definition in the specification as originally filed and as such has used the common meaning of the term "tracking". As such the "tracking" features of Pellegrino et al and Leshem et al clearly show the abilities to track user's as they progress through a series of linked web-pages, creating a progressive history file of each of the pages accessed.

Response to Section 5:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the site map provides the user's progress at any instant in time to both the user and the teacher) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - a. Wood et al (US 2002/0045154 A1) teaches system including the ability to track a user's progress through a series of linked web-pages, and saving such information in a profile
 - b. Holtzblatt et al (US 2001/0038395 A1) teaches a system and method for displaying site maps to users, including histories of each page visited within a given tree of the linked web-pages

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH


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shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Theresa Walberg can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Kathleen M. Christman


Teresa Walberg
Supervisory Patent Examiner
Group 3700